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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/841,140
Filing Date: April 24, 2001
Appellant(s): KESSLER ET AL.

Paul Kiel
Reg. No. 40,677
For Appellant

EXAMINER'S ANSWER

In response to the Board remand dated 7/15/09, the Examiners Answer dated 1/25/08 is vacated in favor of the Examiners Answer provided herein.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,034,746	Desai et al	3-2000
5,917,830	Chen et al	6-1999

6,026,164

Sakamoto et al

2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-2, 4-8, 11-15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (6034746), (hereinafter referred to as "Desai") in view of Chen et al. (5917830), (hereinafter referred to as "Chen").

Regarding claims 1 and 19, Desai discloses an apparatus that relates to information handling systems (Desai: column 1, lines 6-9). This apparatus comprises "receiving encoded data representing a first video program having a first resolution" (Desai: column 4, lines 1-5, wherein the first video program is the data stream), "receiving encoded data representing a second video program of a second resolution lower than the first resolution" (Desai: column 4, lines 5-12, wherein the second video program is the commercial), "generating transmission identification information for signaling a transition from the first display program to the second display program" (Desai: column 5, lines 1-10, wherein the identification information is the commercial insert points), "incorporating the first and second video program and identification information into packetized data" (Desai: column 4, lines 23-29, wherein the packetized data is the program stream), and "providing the packetized data for output to a transmission channel" (Desai: figure 1, wherein the packetized data is output over the network). However, Desai fails to disclose simultaneously receiving and seamlessly incorporating the first and second streams. Chen teaches that inserting

commercials into streams requires a number of time-consuming steps that must be implemented with additional hardware (Chen: column 1, lines 40-50). To help alleviate this problem, Chen discloses "simultaneously receiving a second video stream" (Chen: figure 4, wherein the second stream is the insertion stream) and "seamlessly incorporating the first and second stream" (Chen: column 6, lines 48-54). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Desai and add the processing taught by Chen in order to obtain an apparatus that operates more efficiently by reducing the time needed to insert commercials into a stream.

Regarding claim 2, Chen discloses "a buffer which holds and outputs sufficient video data to match the time for switching the first and second streams" (Chen: figure 4).

Regarding claims 4 and 11, Desai discloses "the second video program is a video commercial" (Desai: column 4, lines 5-12).

Regarding claims 5-7 and 12-14, although not disclosed, it would have been obvious to provide the video data such as a news program from a network feed and local video program (Official Notice). Doing so would have been obvious in order to make the system more versatile by being able to transmit video to a user if one of the local/network feeds is down.

Regarding claims 8 and 15, although not disclosed, it would have been obvious to transmit the data via satellite (Official Notice). Doing so would have

been obvious in order to obtain an apparatus that can safely and reliably transmit data.

2. Claims 3, 9-10, 16-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (6034746), (hereinafter referred to as "Desai") in view of Chen et al. (5917830), (hereinafter referred to as "Chen") in further view of Sakamoto et al. (6026164), (hereinafter referred to as "Sakamoto").

Regarding claims 3 and 10, note the examiners rejection for claim 1, and in addition, claims 3 and 10 differ from claim 1 in that claims 3 and 10 further require upconverting the video data. Sakamoto teaches that it is difficult to effect scrambling without changing the code length (Sakamoto: column 2, lines 1-3). To help alleviate this problem, Sakamoto discloses "upconverting the decoded second resolution data" (Sakamoto: figure 9, wherein the upconverting is the up-sampling). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the upconverting taught by Sakamoto in order to obtain an apparatus that operates more efficiently by being able to scramble the data and keep the code length constant.

Regarding claim 9, note the examiners rejection for claim 1 and in addition Sakamoto further discloses "decoding the video program to provide a decoded first resolution data and a decoded second resolution data" (Sakamoto: figure 9, wherein the first resolution data is the HDTV data and the second resolution data is the SDTV data).

Regarding claims 16-17, Sakamoto discloses "storing data in a buffer" (Sakamoto: figure 9).

Regarding claim 18, Sakamoto discloses "the buffer is MPEG compliant" (Sakamoto: figure 9, column 1, lines 47-49).

Regarding claim 20, note the examiners rejection for claims 1 and 4.

(10) Response to Argument

- i. On pages 8-13, appellant argues that Chen fails to disclose simultaneously receiving a second video stream.

Chen illustrates in figure 4, simultaneously receiving a main stream and an insertion stream. Chen further discloses in column 4, lines 57-62, that the insertion stream can be inserted into different main programs at the same time. Chen also discloses in column 12, lines 30-35, that many of the processing steps can be performed concurrently. Since Chen shows the main stream and insertion stream being received by the system and discloses the concurrent and same time processing, Chen is simultaneously receiving a second video stream. Further, the sections of Chen cited by the appellant deal with the processing, not the reception, of the streams which does not have to be simultaneous.

- ii. On pages 13-14, appellant argues that there is no motivation to combine Desai with Chen and Chen teaches away from Desai.

Chen discloses in column 1, lines 40-50, that inserting commercials into streams requires a number of time-consuming steps that must be implemented with additional hardware. Hence, Chen discloses an apparatus that helps reduce

these number of steps and the associated hardware. Further, since both Desai and Chen are within the same field of endeavor and contain similar subject matter, the combination is deemed proper. Further, under KSR, all the elements are known, could have been combined without any change of function, and would give predictable results. Thus, this is simply a modification of equivalent parts, not a teaching away.

- iii. On page 16, appellant argues that Sakamoto fails to disclose the simultaneous decoding.

Sakamoto illustrates in figure 5, three decoders (36, 37, and 38) operating in parallel. Since the decoders are operated in parallel, the decoders are decoding data simultaneously. Hence, Sakamoto discloses the simultaneous decoding.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Evidence Appendix

No evidence has been submitted by appellant.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Dave Czekaj

Application/Control Number:
09/841,140
Art Unit: 2621

Page 8

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